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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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Federal Communication Commission
Bureau / Office

In the Matter of

Amendment of Sections 73.202(b),
Table of Allotments,
FM Broadcast Stations,
(Grass Valley, Citrus Heights,
and Colfax, California)

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MB Docket No. 00-____
RM-____

To: Chief, Allocations Division

PETITION FOR RULEMAKING

EDUCATIONAL MEDIA FOUNDATION

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Dated: September 17, 2003

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SUMMARY

Educational Media Foundation (“EMF”), the licensee of noncommercial educational station KLVS(FM), Channel 257B1, Grass Valley, California, requests the allotment of Channel 258A to Citrus Heights, California, the modification of the license of KLVS(FM) to specify operation on Channel 258A at Citrus Heights, and the allotment of Channel 257A at Colfax, California. The requested allotments are in compliance with the Commission’s technical rules and will result in a preferential arrangement of allotments pursuant to the Commission’s change of community procedures. The grant of the requested allotments will ultimately provide the communities of Citrus Heights and Colfax with their first local services without depriving Grass Valley of local aural transmission service.

The communities of Citrus Heights and Colfax each have the social, economic, and cultural characteristics of a community and warrant first local aural transmission services. Because Citrus Heights is located within the Sacramento Urbanized Area, the relocation of KLVS from Grass Valley to Citrus Heights implicates the Commission’s policy concerning the relocation of stations from rural to urbanized areas. Using the factors in Faye and Richard Tuck, 3 FCC Rcd 5374 (1998), EMF has rebutted the presumption of interdependence between Citrus Heights and the Urbanized Area of Sacramento and shown that the community of Citrus Heights is a unique, self-sufficient community and merits a first local service preference.

EMF respectfully request that the Commission initiate the rule making requested herein to amend Section 73.202(b) of the Commission’s Rules to allot Channel 258A to Citrus Heights and allot Channel 257A at Colfax, California. If the proposal set forth herein is adopted, EMF will promptly file the appropriate application to permit operation of KLVS on Channel 258A at

Citrus Heights and expeditiously construct the KLVS facilities at Citrus Heights. EMF will also file an application for the new station on Channel 257A at Colfax.

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and Colfax, California))	

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

Educational Media Foundation ("EMF"), licensee of noncommercial educational station KLVS(FM), Channel 257B1, Grass Valley, California, by its undersigned attorneys and pursuant to Section 1.401 of the Commission's rules, hereby petitions the Commission to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, to allot Channel 258A to Citrus Heights, California and to modify the license of KLVS(FM) to specify Channel 258A at Citrus Heights. EMF also requests that the Commission allot Channel 257A to Colfax, California, an allocation which is only possible because of the relocation of KLVS. Specifically, EMF requests that the FM Table of Allotments be amended as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Grass Valley, CA	231A, 257B1, 277A	231A, 277A
Citrus Heights, CA	---	258A
Colfax, CA	---	257A

In support of this Petition, EMF states as follows:

Technical Considerations

As demonstrated by the Engineering Statement attached hereto as Exhibit A, the requested allotment of Channel 258A to Citrus Heights is mutually exclusive with KLVS(FM)'s currently authorized allotment at Grass Valley. Therefore, the proposed reallocation complies with the requirements of Section 1.420(i) of the Commission's rules. In addition, Channel 258A can be allotted to Citrus Heights in compliance with the Commission's minimum distance separation requirements with a site restriction of 7 kilometer south. Following the move of KLVS to Citrus Heights, Channel 257A may be allotted to Colfax in compliance with the Commission's minimum distance separation requirements with a site restriction of 20 kilometers to the north. As demonstrated in Exhibit A, the proposed sites will provide full city grade coverage to the communities of Citrus Heights and Colfax, respectively.

Policy Considerations

The allotment of Channel 258A to Citrus Heights and allotment of Channel 257A to Colfax will result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures.¹ Pursuant to those procedures, the existing arrangement of allotments must be compared with the proposal using the FM allotment priorities: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters.² The public interest supports the granting of this request. The communities of Citrus Heights and Colfax currently have no local aural transmission services. In contrast, Grass Valley is currently served by KLVS(FM) and radio stations KNCO(AM), KNCO-FM, and TV

¹ See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

² See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1992). Co-equal weight is given to priorities (2) and (3).

translator station K216CX.³ Thus, grant of the requested allotments will ultimately provide the communities of Citrus Heights and Colfax with their first local services without depriving Grass Valley of local aural transmission service.

Moreover, grant of EMF's proposal would permit EMF to substantially increase the number of listeners within KLVS(FM)'s primary service area. The facilities specified in the existing KLVS(FM) license serve 182,403 people within the 60 dBu contour. The allotment of Channel 258A to Citrus Heights as proposed herein will result in a gain of 1,211,798 people, or a 764.4% gain, in population served.⁴ Alloting Channel 257A to Colfax will provide coverage within the 60 dBu contour to 140,813 people. As demonstrated in the attached Engineering Statement, the overall changes proposed herein will provide a 841.6% increase in population served, and an overall increase in area of 14.9%.

Finally, the communities of Citrus Heights and Colfax each have the social, economic, and cultural characteristics of a community and warrant first local aural transmission services. Citrus Heights, located in Sacramento County, is an incorporated community of 85,071 people. Incorporated in 1997, the community has a mayor-council form of government, its own police department, a post office, library, both public and private schools, multiple churches and parks, and numerous local businesses and community organizations.⁵ Colfax, located in Placer County, is recognized in the 2000 U.S. Census as an incorporated community with a population of 1,496 people. The community of Colfax has its own post office and zip code, volunteer fire

³ The Commission recently granted Grass Valley Broadcasting, LLC a construction permit for a new NCE-FM station at Grass Valley, California. See FCC File No. BPH-19970814MO. Calvary Chapel Grass Valley was also recently granted a construction permit for a new low power FM station to serve Grass Valley. See FCC File No. BNPL-200006605AEW. There are also six pending applications for new FM translator stations at Grass Valley.

⁴ See Engineering Statement at page 2.

⁵ See Exhibit B hereto.

department, an elementary school and high school, and local government comprised of a full-time City Manager and a five-member City Council. The residents of Colfax are also served by a youth center, local library, ball field, park, several churches and numerous businesses, including Blue Cat Studio, Farmers Insurance Group, Colfax Realty, The Railhead Saloon, and the Colfax Watchdog, which publishes a monthly newsletter covering the government and politics of Colfax.⁶ In similar circumstances, the Commission has found that other similar and much smaller places possess the requisite social, economic and cultural components to qualify as communities for allotment purposes.⁷

If the Commission grants this proposal, EMF intends to file an appropriate application on Channel 258A at Citrus Heights and, upon grant, to promptly implement the reallocation. EMF will also file an application for the new station on Channel 257A at Colfax.

Tuck Analysis

Citrus Heights is located within the Sacramento Urbanized Area. Accordingly, this relocation implicates the Commission's policy concerning the relocation of stations from rural to urbanized areas. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). When an applicant proposes an FM allotment to a community based on a first local service preference, and that community is located in an Urbanized Area, or the 70 dBu contour of the station which is subject to the rulemaking covers 50% or more of an Urbanized Area, a presumption of interdependence between the community and the Urbanized Area is created. See

⁶ See Exhibit C hereto.

⁷ See, e.g., Pentwater and Walhalla, Michigan, 13 FCC Rcd 6580 (MM Bur. 1998) (finding Walhalla, Michigan, a 400 person community located in Branch Township, to be a community for allotment purposes because it constituted an identifiable population grouping with businesses and community organizations that identified themselves with its residents), Deerfield, Missouri, 12 FCC Rcd 12150 (MM Bur. 1997) (finding Deerfield, Missouri, an 85 person community located in Deerfield Township, to be a community for allotment purposes).

Faye and Richard Tuck, 3 FCC Rcd 5374 (1998) (hereinafter “Tuck”). If the presumption of interdependence is not rebutted, the community is credited with all the local transmission services licensed to communities within the Urbanized Area. Id.

Under Tuck, the Commission examines the following factors in determining whether an applicant rebuts the presumption of interdependence and whether the community deserves a first local service preference: (1) the interdependence of the suburban community with the central city; (2) size and proximity of the suburban community; and (3) signal population coverage. Id. As demonstrated below, an analysis of the factors in this case will rebut the presumption of interdependence between Citrus Heights and the Urbanized Area of Sacramento, and will show that the community of Citrus Heights merits a first local service preference.

A. EMF Satisfies the Most Important Factor in the Tuck Analysis – Citrus Heights is Independent from Sacramento.

The Commission has consistently held that the degree of interdependence between the proposed community and the centralized city in the Urbanized Area is the most significant consideration in the Tuck analysis. See Farmington, California, 11 FCC Rcd 8117 (1996). As demonstrated below, Citrus Heights is not simply an appendage of Sacramento, but, on the contrary, exists as a unique, self-sufficient community. It is independent from the city of Sacramento, and is therefore fully deserving of a first local service preference.

Citrus Height’s independence is shown through an analysis of the following eight criteria:

1) The extent to which community residents work in Citrus Heights, rather than Sacramento

In March 1999, the Citrus Heights City Council adopted the city’s first Economic Development Strategy and Action Plan to strengthen and diversify its economy, provide a multi-

faceted approach to business retention and attraction, and ensure that Citrus Heights is a viable, healthy community where business owners, workers, and their families want to live.⁸

The success of the plan has made Citrus Heights home to a myriad of local businesses. The economy of Citrus Heights is independent and vibrant. The Sunrise Market Place alone, which is located in the heart of Citrus Heights, represents approximately 80 property owners and over 500 businesses and restaurants, including the Sunrise Mall, Capital Nursery, Premier Computer, Lowe's Home Improvement, and Century 21 Real Estate. In addition, the Citrus Heights Chamber of Commerce and the city continue to work together to effectively promote local business through such programs as Showcase Citrus Heights, an annual event to highlight business opportunities in Citrus Heights, Business Expo, a local business expo that showcases Citrus Heights businesses, and Shop Citrus Heights, a program to promote shopping opportunities in the community. Because of the abundance of businesses that exist in Citrus Heights, residents have the option of working in the community itself, rather than commuting to Sacramento. In fact, according to the 2000 Census, over 66 percent of Citrus Heights residents over the age of sixteen have worked within the community.⁹ As described on the Citrus Heights Chambers of Commerce website, "abounding with opportunity, an excellent location, and a supportive business climate, Citrus Heights offers a 'small town' feeling with 'big town' benefits."¹⁰

⁸ See Exhibit B.

⁹ See Census Lookup: Citrus Heights; <http://venus.census.gov/cdrom/lookup/>

¹⁰ See <http://www.ci.citrus-heights.ca.us/edrda/benefits.html>

2) Whether Citrus Heights has its own newspaper or other media that covers the community's local needs and interests

Citrus Heights has its own monthly newspaper, *The City Times*, published solely for Citrus Heights. This monthly publication carries news and advertising of special interest to the residents of Citrus Heights, such as coverage of community events and activities and features on community leaders. Residents of Citrus Heights also obtain local news and information concerning the community through NewsCitrusHeights.com, an interactive news and information website for Citrus Heights. In addition, the city of Citrus Heights publishes a quarterly newsletter, *Citrus Heights Connections*, to keep property owners, businesses, and residents apprised of the city's developments. The city also maintains its own webpage at www.ci.citrus-heights.ca.us, which allows city residents to access a variety of information regarding city officials, public services, committee meetings, development, job opportunities, and community events.

3) Whether Citrus Heights leaders and residents perceive their community as being an integral part of or separate from, the larger Sacramento metropolitan area

Business owners, residents, and community leaders in Citrus Heights, through active organization and participation in the community and its events, perceive their community as being separate from Sacramento. In fact, the residents of Citrus Heights, led by the Chamber of Commerce, endured a long, 12-year battle with the county of Sacramento to bring cityhood and independence to Citrus Heights. The community's efforts were ultimately successful when, following a successful referendum campaign for incorporation, Citrus Heights became incorporated on January 1, 1997. Unlike other communities near Sacramento, which may depend on the larger metropolitan area for their economic, social, and cultural needs, Citrus Heights is truly a full-service and self-contained community. Through the many local businesses

and services, including grocery stores, clothing stores, churches, a police department, dentists, doctors' and lawyers' offices, etc., residents can have all of their needs met without leaving the community.¹¹ Furthermore, business owners, church and community leaders, and residents come together in multiple community organizations, including the Citrus Heights Teen Unity Team, Citrus Heights Little League, and The Lions Club, and join in sponsoring and organizing many local events, including the Concert in the Park series at the Sunrise Recreation and Park District, annual campouts at Rusch Park, the 4th of July parade, and other festivities throughout the year that take place in Citrus Heights, are centered around the community, and are separate from Sacramento.¹²

4) Whether Citrus Heights has its own local government and elected officials

Citrus Heights has its own local government and elected officials. The Citrus Heights city government is comprised of a mayor, vice mayor, and three-member council, who are all elected by local Citrus Heights residents. In addition, the Citrus Heights government, which employs over 50 residents of the community, is comprised of many administrative offices to serve the needs of the community, including: (1) a Planning Commission, comprised of seven members who review a variety of developmental applications and are responsible for updating and maintaining the city's General Plan, the Zoning Code, and a variety of other planning documents; (2) a General Services Department, which is responsible for traffic engineering and transportation planning; (3) a Public Services Department, responsible for such initiatives as

¹¹ See Exhibit B.

¹² As stated by Dave Terillinger, the Principal of San Juan High School in Citrus Heights, "cityhood has brought Citrus Heights a greater sense of identity. We have a stronger voice of what happens within our community. We seem more focused on city-based issues and activities, which results in a stronger business climate, better law enforcement, and cleaner streets." See City of Citrus Heights Connections, Volume IV, Number 3, December 2002, at 4.

storm control, animal control, pavement maintenance, and city beautification; and (4) a Community Relations Department, which oversees neighborhood services and the Residents' Empowerment Association of Citrus Heights, a group created to empower residents to resolve disputes and problems at the neighborhood level.¹³ These governmental bodies, elected or appointed to serve the city of Citrus Heights, further demonstrate Citrus Heights's separateness and independence from Sacramento.

5) Whether Citrus Heights has its own zip code or telephone book provided by the local telephone company

Citrus Heights has its own zip code ("95621") and its own branch of the U.S. Post Office. Citrus Heights has its own local telephone directory. Citrus Heights's businesses are also listed in the Roseville Telephone Company's local telephone directory, which contains a separate section for the Citrus Heights government listings.

6) Whether Citrus Heights has its own commercial establishments, health facilities, and transportation systems

Citrus Heights is a full service community offering many goods and services from over 500 local commercial establishments, including grocery stores, clothing shops, hotels, cleaning services, florists, dry cleaners, auto body repair shops, and over 100 restaurants. Citrus Heights also has several doctors' and dentists' offices, animal hospitals, its own medical and health center, eye surgery center, and nursing homes. Public transportation is also readily available throughout the city through a bus service and a Neighborhood Shuttle system, providing shuttle buses to meet the needs of the Citrus Heights residents. A recent Public Opinion Survey, conducted by an independent polling firm to determine public opinion on a number of issues

¹³ See Exhibit B.

important to the City of Citrus Heights, revealed that the residents of Citrus Heights show significant levels of satisfaction with the services offered in the community.¹⁴

7) The extent to which Citrus Heights and Sacramento are part of the same advertising market

Local businesses in Citrus Heights can advertise in the community's local newspaper, *The City Times*, and on the Citrus Heights Chamber of Commerce website, which allow them to reach the residents of Citrus Heights; businesses do not need to utilize the Sacramento advertising market. Residents of Citrus Heights can also access the city's webpage and NewsCitrusHeights.com to learn about community events and local news.

8) The extent to which Citrus Heights relies on Sacramento for various municipal services such as police, fire protection, schools and libraries

Citrus Heights is self-sufficient and provides the majority of its own municipal services. The community provides one-stop shopping with its own municipally-owned and operated water source, sewer service, and garbage collection service. In addition, Citrus Heights has its own local police department, 911 emergency services, neighborhood police patrols, thirteen public elementary schools, two public middle schools, four public high schools, three community colleges, a public library, day care center, fitness center, and six community parks, including Rusch Park, which houses a community swimming pool and a skating arena, and is the home to numerous community festivities, including the weekly summer Concert in the Park series.¹⁵ To increase community cohesiveness and independence, the city is also in the process of constructing a community center, which will include such public amenities as meeting rooms, a

¹⁴ See Exhibit B. In addition, according to the survey, almost 80% of Citrus Heights residents do their grocery and clothes shopping in the community and almost 70% of the residents do the majority of eating out at restaurants, and shopping for home improvement, in Citrus Heights.

¹⁵ See Exhibit B.

gymnasium, art and dance studios, teen and senior space, and a banquet room. Citrus Heights, as demonstrated above, is a distinct community, separate from Sacramento. Consequently, Citrus Heights, as a community independent of the Sacramento Urbanized Area, deserves a first local service preference.

B. Citrus Heights Satisfies the other Factors in the Tuck Analysis – the Size and Proximity of Citrus Heights to Sacramento and the Signal Population coverage of KLVS over the Sacramento Urbanized Area

Citrus Heights, with a population of 85,071, is approximately 13 miles from Sacramento, which has a population of 407,018, according to the 2000 US Census. From the proposed transmitter site, KLVS would provide coverage within the 70 dBu contour to no more than 36.8 percent of the population within the Sacramento Urbanized Area. These figures are similar to those of other suburban communities granted a first local preference.¹⁶ Moreover, the Commission has granted channel change petitions where the proposed community's population as a percentage of the central city population was considerably smaller and where the community was located much closer to the central city of the urbanized area.¹⁷ The Commission has also repeatedly stated that these factors have less significance than evidence of interdependence.¹⁸ As demonstrated above, the unique characteristics of Citrus Heights, as a community separate from Sacramento, rebut the presumption of interdependence. Citrus Heights is a unique self-sufficient community which merits a first local service preference.

¹⁶ See e.g., Anniston, Alabama, et al., 16 FCC Rcd 3411, aff'd by the Commission, 16 FCC Rcd 19857 (2001).

¹⁷ See Ada, Newcastle and Watonga, Oklahoma, 11 FCC Rcd 16896 (1996) (finding Ada independent of Oklahoma City despite population equal to 0.9% of Oklahoma City); Mullins and Briarcliffe Acres, South Carolina, 14 FCC Rcd 10516 (1999) (finding Mullins independent of the Myrtle Beach area despite only a four miles separation).

¹⁸ See Faye and Richard Tuck, 3 FCC Rcd 5374 at ¶ 28.

Declaration of Intent

If the proposal set forth herein is adopted, EMF will promptly file the appropriate application to permit operation of KLVN(FM) on Channel 258A at Citrus Heights and expeditiously construct the KLVN(FM) facilities at Citrus Heights. EMF will also file the appropriate application for Channel 257A at Colfax when the Commission opens a window and, if authorized, will proceed promptly with construction and operation of the new station.

Conclusion

For the foregoing reasons, EMF respectfully requests that the Commission initiate the rule making requested herein to amend Section 73.202(b) of the Commission's rules, the Table of Allotments for FM Broadcast Stations, to allot Channel 258A to Citrus Heights, California and to modify the license of KLVN(FM) to specify Channel 258A at Citrus Heights, and to allot Channel 257A to Colfax, California.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

By: _____

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